

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Shadman Khan	Team: Squad #12	CCRB Case #: 201905971	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 06/10/2019 3:30 PM	Location of Incident: [REDACTED]	Precinct: 84	18 Mo. SOL 12/10/2020	EO SOL 7/27/2021	
Date/Time CV Reported Tue, 07/09/2019 10:30 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 07/09/2019 10:30 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Kyle Reiss	16078	957994	BKLN CT
2. LT Roberto Delapena	00000	936444	BKLN CT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM John Mccarthy	24558	964155	078 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Roberto Delapena	Force: Lieutenant Roberto Delapena used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
B.LT Roberto Delapena	Force: Lieutenant Roberto Delapena used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
C.LT Roberto Delapena	Force: Lieutenant Roberto Delapena restricted § 87(2)(b) [REDACTED]'s breathing.	[REDACTED]
D.POM Kyle Reiss	Force: Police Officer Kyle Reiss used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
E.LT Roberto Delapena	Force: Lieutenant Roberto Delapena used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
F.LT Roberto Delapena	Abuse: Lieutenant Roberto Delapena failed to secure medical treatment for § 87(2)(b) [REDACTED]	[REDACTED]

Case Summary

On July 9, 2019, § 87(2)(b) filed this complaint via phone with the CCRB.

On June 10, 2019, at approximately 3:30 pm, § 87(2)(b) was at § 87(2)(b) pursuant to an arrest. While in a holding cell at § 87(2)(b) began having chest pains. He stepped over his rear handcuffed hands and held his chest while he called for help. Lt. Roberto Delapena and PO Kyle Reiss, both from the Brooklyn Court Section, entered the holding cell. Lt. Delapena grabbed § 87(2)(b) by the back of his neck and threw him to the ground, causing him to sustain a laceration on the top of his head (**Allegation A - Force: Physical force, § 87(2)(g)**). Lt. Delapena then used his knee to strike § 87(2)(b) on his back (**Allegation B - Force: Physical force, § 87(2)(g)**). Immediately after this, Lt. Delapena used his right knee to apply pressure on the left side of § 87(2)(b)'s neck, which restricted § 87(2)(b)'s breathing (**Allegation C - Force: Restricted Breathing, § 87(2)(g)**). PO Reiss stepped on the leg shackle that § 87(2)(b) had on his left leg, which caused him pain to the back of his left ankle and leg (**Allegation D - Force: Physical force, § 87(2)(g)**). As he was handcuffing § 87(2)(b), Lt. Delapena grabbed and twisted § 87(2)(b)'s right arm back as far as he could, which caused § 87(2)(b) pain to his right arm (**Allegation E - Force: Physical Force, § 87(2)(g)**).

§ 87(2)(b) told Lt. Delapena that he needed to go to the hospital, and Lt. Delapena did not obtain the requested treatment for him (**Allegation F - Abuse of Authority: Refusal to obtain medical treatment, § 87(2)(g)**).

There was no video footage obtained during the course of the investigation.

Findings and Recommendations

Allegation (A) Force: Lieutenant Roberto Delapena used physical force against § 87(2)(b)

Allegation (B) Force: Lieutenant Roberto Delapena used physical force against § 87(2)(b)

Allegation (C) Force: Lieutenant Roberto Delapena restricted § 87(2)(b)'s breathing.

§ 87(2)(b) was arrested on May 30, 2019. In his statement to the CCRB (Board Review 01), § 87(2)(b) stated that he had been at § 87(2)(b) Hospital-Brooklyn for a week related to a pacemaker before he was escorted to a holding cell at § 87(2)(b) on June 10, 2019 at approximately 3:30pm. A short while after being placed in his cell, § 87(2)(b) started having chest pains and called out for help, stating that he was experiencing chest pains and could experience breathing problems. § 87(2)(b) stepped over his rear handcuffed hands so that he could hold his chest. PO Reiss and an officer § 87(2)(b) identified as "Sergeant Pena" from the officer's name tag and described as 6'2" tall and 300-pound bald Hispanic male approached § 87(2)(b) in the holding cell while he was in a bent forward position. The second officer was identified by the investigation as Lieutenant Delapena. Lt. Delapena immediately grabbed § 87(2)(b)'s neck and threw him onto the floor on his face, which caused him to hit an unspecified object and sustain a gash on the top of his head. § 87(2)(b) did not physically resist when he was thrown to the ground and continued to state that he could not breathe. Lt. Delapena used his knee to strike him in the back, which caused § 87(2)(b) pain in the back. Lt. Delapena then used his right knee to apply pressure to the left side of § 87(2)(b)'s neck and to his left shoulder near § 87(2)(b)'s collarbone for ten to fifteen minutes, which caused § 87(2)(b) to be completely unable to breathe and cut off his circulation. § 87(2)(b) also commented that the pressure was exacerbated by the fact that he has scoliosis, a condition which causes him difficulty breathing whenever there is pressure applied to his back. § 87(2)(b) spoke out multiple times during the incident, indicating that he was unable to breathe. § 87(2)(b) also stated that Lt. Delapena kept his right knee positioned on his back and repeatedly kneed him in the back.

Lt. Roberto Delapena is a § 87(2)(b)-year-old, approximately 6'0" tall, 215-pound Hispanic male with brown hair and brown eyes. In his statement to the CCRB, Lt. Delapena testified (Board Review 02) that he had no independent recollection of any incident that occurred on June 10, 2019. When presented with the name § 87(2)(b) and a photograph of § 87(2)(b) Lt. Delapena stated the he was not familiar with either the name or the photo. When Lt. Delapena was presented with the incident details, specifically his pressing his knee against a prisoner's back or the back of the prisoner's neck and a prisoner complaining of being unable to breathe, Lt. Delapena stated that he had no recollection of the incident. Lt. Delapena had no interaction around the time of the incident in the holding cells with a prisoner with a pedigree similar to § 87(2)(b).

PO Kyle Reiss is a § 87(2)(b)-year-old, approximately 5'10" tall, 185-pound white male with brown hair and brown eyes. In his statement to the CCRB, PO Reiss testified (Board Review 03) that he had interactions with § 87(2)(b) over the course of multiple days around the date of the incident. On June 10, 2019, § 87(2)(b) repeatedly moved his rear handcuffed hands to the front of his body while in the holding cell. PO Reiss thought that this presented a safety hazard to officers because § 87(2)(b) would now be able to use the handcuffs as weapons against other officers. PO Reiss determined that he must gain control of § 87(2)(b) and reposition him in a rear handcuffed state. PO Reiss approached § 87(2)(b) in order to adjust the handcuffs. PO Reiss stated that he does not normally take such action alone and therefore believed that he approached § 87(2)(b) with another officer, but he did not specifically recall who this officer was or whether this officer was Lt. Delapena. § 87(2)(b) "pulled away" from the officers when they attempted to handcuff him. PO Reiss stated that himself and other officers may have possibly conducted a forcible takedown against § 87(2)(b) but he does not recall this occurring. He also stated that while § 87(2)(b) was ultimately on the ground, he did not recall what caused this and thought that it may have been due to § 87(2)(b) sitting to move his handcuffs, being instructed to sit, or being taken down. PO Reiss did not recall seeing Lt. Delapena or any officer press his knee against § 87(2)(b)'s neck in a manner that restricted his breathing. PO Reiss did not know whether an officer pressed his knee against any part of the back of § 87(2)(b)'s body. However, PO Reiss stated that if that was the case, it would consist of a "standard takedown" maneuver used when attempting to handcuff a prisoner. PO Reiss was asked multiple times if he himself conducted any type of forcible takedown on § 87(2)(b). Each time, PO Reiss stated that it was possible, but that he did not remember. PO Reiss stated that he would have only been focused on placing the handcuffs on the prisoner in the situation.

The investigation was unable to obtain video footage that depicted the cell area or alleged use of force, nor did the investigation identify any potential witnesses to the allegation.

§ 87(2)(b), § 87(2)(g)

Allegation (D) Force: Police Officer Kyle Reiss used physical force against § 87(2)(b)

Allegation (E) Force: Lieutenant Roberto Delapena used physical force against § 87(2)(b)

§ 87(2)(b) reported that following the above-mentioned uses of force, PO Reiss purposely used both of his feet, which § 87(2)(b) also described as "one of his legs," to step very hard – applying all of his weight – on the leg shackle § 87(2)(b) had on his left leg, which caused § 87(2)(b) pain

on the left ankle and leg. While § 87(2)(b) was still on the ground, Lt. Delapena grabbed and twisted his right arm as far back as he could and handcuffed his right wrist tightly, causing § 87(2)(b) pain on his right arm. § 87(2)(b) also stated that he was particularly sensitive on the right arm due to a car accident in the past which resulted in surgery where he required pins and rods to be placed in his arm.

As noted above, Lt. Delapena testified that he had no independent recollection of any incident that occurred on June 10, 2019, even after being informed of specific details of this alleged incident.

PO Reiss denied that he would intentionally step on leg shackles to cause injury to a prisoner. He stated that he would potentially use his body weight on leg shackles to stop a prisoner from moving their legs, but he did not recall taking this action with § 87(2)(b). PO Reiss testified that § 87(2)(b) did not complain of any action PO Reiss took with respect to his leg shackles.

§ 87(2)(b), § 87(2)(g)

Allegation (F) Abuse of Authority: Lieutenant Roberto Delapena failed to secure medical treatment for § 87(2)(b)

§ 87(2)(b) stated that he initially requested medical treatment when he first started having the chest pains while in the holding cell. § 87(2)(b) also stated that he asked for medical treatment while Lt. Delapena applied pressure to his neck. § 87(2)(b) reported that after force was used, he told Lt. Delapena that he needed to go to the hospital. Lt. Delapena did not call for medical treatment. In § 87(2)(b)'s interview, he said "I told McCartney or the EMS [indiscernible]," but the statement itself is indiscernible. § 87(2)(b) did not receive treatment until he was at in the custody of the Department of Correction at the Brooklyn Detention Complex.

As stated in the previous allegations, Lt. Delapena testified that he had no independent recollection of this incident.

PO Reiss testified that he did not see any injury on § 87(2)(b)'s head and did not see any part of his body bleeding. PO Reiss recalled prior interactions during § 87(2)(b)'s incarceration for the May 30, 2019 arrest where he obtained medical treatment every time § 87(2)(b) requested it. However, PO Reiss did not recall § 87(2)(b) requesting medical treatment before or after this interaction. PO Reiss did not see any officer who was unresponsive to § 87(2)(b)'s requests for medical treatment.

§ 87(2)(b), § 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)

§ 87(2)(b)

- Lt. Delapena has been a member-of-service for fourteen years and has been a subject in one CCRB complaint and one allegation, which was not substantiated. Lt. Delapena's CCRB history does not reflect any apparent pattern pertinent to this investigation.
- PO Reiss has been a member-of-service for four years and has been a subject in two CCRB complaints and three allegations, none of which were substantiated. PO Reiss' CCRB history does not reflect any apparent pattern pertinent to this investigation.

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- As of December 13, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this complaint (Board Review 06).

- § 87(2)(b)

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date